

(APPEARANCES CONTINUED FROM THE PRECEEDING PAGE)

FOR THE DEFENDANTS,
MR. SARKIS MADJARIAN, AND
MR. ARTASHES TER MKRTICHYAN

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ALSO PRESENT:

MR. SARKIS MADJARIAN
MR. ARTASHES TER MKRITCHYAN
MR. SERGE ZADIKIAN

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1 UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA
2 THE HONORABLE MAXINE M. CHESNEY, JUDGE, PRESIDING
3 COURTROOM 7, 19TH FLOOR

4 COURTROOM DEPUTY-CLERK: MISS TRACY LUCERO

5 NOVEMBER 5, 2008

6 2:30 P.M.

7 THE UNITED STATES OF AMERICA, VS. SARKIS MADJARIAN, ARTASHES
8 TER MKRTICHYAN, AND SERGE ZADIKIAN

9 CR-08-0307 (ALL THREE DEFENDANTS ARE PRESENT IN COURT.)

10 HEARING RE: FURTHER STATUS / TRIAL SETTING CONFERENCE

11 (THE JUDGE IS ON THE BENCH.)

12 THE CLERK: CALLING CRIMINAL CASE NUMBER 08-307, THE
13 UNITED STATES VERSUS MADJARIAN,

14 THE COURT: "ET AL."

15 MISS AULT: GOOD AFTERNOON, YOUR HONOR; KIRSTIN AULT,
16 FOR THE UNITED STATES.

17 THE COURT: THANK YOU.

18 MR. JOHNSTON: GOOD AFTERNOON, YOUR HONOR; TOM
19 JOHNSTON, FOR THE DEFENDANT, SERGE ZADIKIAN, WHO IS PRESENT IN
20 COURT.

21 THE COURT: THANK YOU.

22 MR. GHAZARIAN: GOOD AFTERNOON, YOUR HONOR. GARO
23 GHAZARIAN, FOR SARKIS MADJARIAN, WHO IS HERE.

24 AND ALSO ESPECIALLY APPEARING FOR FOR ATTORNEY BOB
25 ROSENBUSH, FOR ARTASHES TER MKRTICHYAN.

1 THE COURT: ALL RIGHT, THANK YOU.

2 THIS MATTER WAS CONTINUED FOR FURTHER STATUS AND TRIAL
3 SETTING --

4 LET ME ASK MISS AULT WHAT SHE UNDERSTANDS THE STATUS
5 TO BE AND THEN JUST CONFIRM THAT SHE HAS CORRECTLY STATED WHAT
6 COUNSEL UNDERSTANDS AS WELL.

7 MISS AULT: YES, YOUR HONOR. THIS MATTER ORIGINALLY
8 APPEARED, IT WAS THE FIRST APPEARANCE FOR THESE DEFENDANTS ON
9 SEPTEMBER 3RD.

10 AND MR. ROSENBUSH, AT THAT TIME, WHO IS COUNSEL FOR
11 MR. TER MKRTICHYAN, STATED THAT HE WAS GOING TO BE IN A TRIAL.
12 I UNDERSTAND THAT HE CURRENTLY IS IN TRIAL.

13 HOWEVER, DURING THAT TIME WE HAVE MADE PROGRESS. I
14 HAVE PROVIDED DISCOVERY TO DEFENSE COUNSEL.

15 I HAVE ALSO PROVIDED PROPOSED PLEA AGREEMENTS TO ALL
16 DEFENSE COUNSEL.

17 AND WHAT I THINK -- I HAVE SPOKEN WITH DEFENSE
18 COUNSEL, WHO ARE HERE. WHAT WE SHOULD PROBABLY DO IS PUT IT
19 OVER ONE MORE TIME. AND THEN, AT THAT NEXT APPEARANCE, SET IT
20 FOR MOTIONS.

21 NOW, I UNDERSTAND THAT MR. ROSENBUSH IS NOW -- WHO HAD
22 ORIGINALLY ANTICIPATED TO BE OUT OF TRIAL BY DECEMBER, NOW IT
23 IS NOT GOING TO BE UNTIL THE END OF JANUARY.

24 AND I CERTAINLY OBJECT TO PUTTING THE CASE OVER UNTIL
25 FEBRUARY.

1 I UNDERSTAND THAT MR. ROSENBUSH IS IN TRIAL. BUT THE
2 CSE NEEDS -- WE NEED TO KEEP MOVING THE CASE FORWARD.

3 THE COURT: WELL, THAT CAN BE DONE IF THE APPEARANCES
4 ARE IN THE NATURE OF SETTING HEARING DATES, AND MR. ROSENBUSH'S
5 CALENDAR IS MADE KNOWN TO ONE OF THE OTHER CO-COUNSEL.

6 MR. GHAZARIAN: YOUR HONOR, IF I MAY BRIEFLY BE HEARD.

7 I SPOKE WITH MR. ROSENBUSH LATE LAST NIGHT AS WELL AS
8 AROUND THE LUNCH HOUR TODAY WHEN I LANDED FROM LOS ANGELES IN
9 SAN FRANCISCO AIRPORT.

10 HE INDICATED TO ME THAT HIS TRIAL BEGAN THE LAST WEEK
11 OF SEPTEMBER AND IS DUE TO GO UNTIL THE LAST WEEK OF JANUARY.
12 THEY ARE STILL IN JURY SELECTIONS THIS WHOLE TIME. THEY HAVE
13 DONE MOTIONS IN LIMINE, AND THEY ARE ABOUT TO TRANSITION FROM
14 HARDSHIP TO VOIR DIRE.

15 HE ALSO INDICATED TO ME THAT HE BELIEVED HE HAD
16 INFORMED THE COURT LAST TIME, THAT THIS WAS A MATTER BEFORE
17 JUDGE MILLER, IN DEPARTMENT 23, HALL OF JUSTICE, WITH HARRY
18 DORFMANN AS A PROSECUTOR.

19 THE COURT: I DON'T THINK THAT REALLY MATTERS. BUT CAN
20 WE GET A LITTLE CLOSER TO THE POINT YOU ARE ABOUT TO MAKE HERE?

21 MR. GHAZARIAN: THE POINT I'M ABOUT TO MAKE HERE IS
22 THE FOLLOWING.

23 THE COURT: OKAY.

24 MR. GHAZARIAN: HE IS GOING TO BE IN TRIAL. I HAVE
25 NEVER BEEN REPRESENTED BY MR. ROSENBUSH THAT HIS TRIAL WAS GOING

1 TO END IN DECEMBER.

2 I HAVE ALWAYS KNOWN THAT HIS TRIAL WAS GOING TO GO
3 INTO JANUARY.

4 I AM MORE THAN HAPPY TO KEEP COMING UP HERE. BUT --

5 THE COURT: WELL, WE DON'T WANT YOU TO HAVE TO KEEP
6 COMING IF NOTHING IS GOING TO HAPPEN.

7 BUT, IS THERE ANY REASON WHY, FOR EXAMPLE, AT THE
8 NEXT CALLING WE COULDN'T HAVE A DATE SET FOR WHATEVER IT IS
9 GOING TO BE, PRETRIAL MOTIONS.

10 ACTUALLY I SHOULDN'T ACCEPT, IN THE FUTURE, MISS AULT,
11 A STATEMENT THAT THAT MATTERS ARE GOING TO BE BRIEF.

12 BECAUSE THIS IS OBVIOUSLY NOT AN BRIEF MATTER; IT IS
13 NOT SIMPLE; THE PARTIES ARE IN DISAGREEMENT; IN THE MEAN TIME,
14 THE MARSHAL HAS PEOPLE IN CUSTODY.

15 SO, IN THE FUTURE, YOU SHOULD EITHER TRY TO GET AN
16 AGREEMENT SO YOU COULD GET CALLED EARLIER, OR YOU ARE PROBABLY
17 GOING TO HAVE TO WAIT UNTIL ALL THE CUSTODY'S ARE CALLED.

18 IN ANY EVENT, ARE YOU OBJECTING TO THE MATTER BEING
19 PUT OVER IN ADVANCE OF MR. ROSENBUSH BEING THROUGH WITH HIS
20 TRIAL?

21 MR. GHAZARIAN: YES, YOUR HONOR.

22 THE COURT: WHY?

23 MR. GHAZARIAN: BECAUSE MR. ROSENBUSH IS NOT IN A
24 POSITION TO WORK ON THE CASE, BASED ON HIS REPRESENTATION TO THE
25 GOVERNMENT.

1 AND TO SET A DATE FOR MOTIONS, MR. ROSENBUSH WILL
2 OBVIOUSLY NOT BE READY TO PROCEED WITH THE MOTIONS.

3 THE COURT: I GUESS WHAT I UNDERSTAND, I GATHER FROM
4 MISS AULT, IS THAT SHE WOULD LIKE TO GET SOME DATES SET. THEY
5 DON'T HAVE TO BE SET AT A TIME THAT COULD CROWD MR. ROSENBUSH'S
6 ABILITY, SO TO SPEAK, TO GET READY FOR THEM, BUT JUST TO HAVE
7 THEM SET.

8 MR. JOHNSTON: YOUR HONOR, WHAT WE HAD PROPOSED,
9 ALTHOUGH WE DISAGREED, WAS TO SET A DATE IN EARLY FEBRUARY; THE
10 EARLIEST DATE AFTER MR. ROSENBUSH IS DONE WITH HIS TRIAL.

11 THEN, HE WOULD BE IN A POSITION TO COME IN AND
12 MEANINGFULLY SET SOME DATES TO GET THE CASE GOING.

13 AND MISS AULT, AS I UNDERSTAND IT, IS UNCOMFORTABLE
14 WITH PUTTING THE CASE OVER THAT LONG.

15 OUR CONCERN IS: IF WE COMING BACK IF THIRTY OR SIXTY
16 DAYS, IT IS GOING TO BE JUST LIKE TODAY, WE ARE GOING TO BE
17 SAYING, LIKE WE SAID, MR. ROSENBUSH IS STILL IN TRIAL, WON'T BE
18 AVAILABLE UNTIL THE END OF JANUARY.

19 THE COURT: WELL, HE COULD AT LEAST ADVISE COUNSEL FOR
20 -- HE DOESN'T HAVE TO RELY ON YOU. HE COULD SEND SOMEONE INTO
21 COURT, IT DOESN'T HAVE TO BE COUNSEL FOR ANOTHER DEFENDANT WHO
22 MAY OR MAY NOT HAVE CONFLICT WITH MR. ROSENBUSH'S CLIENT.

23 BUT HE CAN SEND SOMEONE IN TO REQUEST THAT THE MOTION
24 DATE BE SET AT A PARTICULAR TIME.

25 BY THE TIME WE COME BACK, WHATEVER THAT DATE IS, HE

1 SHOULD HAVE A BETTER IDEA OF WHEN HE IS GOING TO BE THROUGH WITH
2 THE CASE.

3 LET'S SEE, MR. GHAZARIAN SAYS THAT THE CASE IS STILL
4 IN THE EARLY STAGES.

5 MR. GHAZARIAN: WELL, IT HAS BEEN GOING SINCE THE LAST
6 WEEK OF SEPTEMBER. AND THEY ARE NOW GOING INTO VOIR DIRE OF THE
7 JURY.

8 THE COURT: WHAT HAPPENED BEFORE?

9 MR. GHAZARIAN: MOTIONS IN LIMINE.

10 THE COURT: IT CAN'T BE THAT HE COULDN'T GOTTEN AWAY
11 FOR SOME LIMITED PERIOD DURING THAT TIME; HE WASN'T APPEARING
12 WITH THE JURY IN THOSE PROCEEDINGS.

13

14 MR. JOHNSTON MR. GHAZARIAN: MR. JOHNSTON: YOUR
15 HONOR, I ASKED ABOUT THAT. HE INDICATED TO ME THAT THEY ARE
16 DARK ON FRIDAY'S; AND, HE IS HAPPY TO COME IN ON FRIDAY.

17 THE COURT: WELL, I THINK THAT IS WHAT WE OUGHT TO DO;
18 OKAY?

19 MR. GHAZARIAN: OKAY.

20 THE COURT: WE WILL SET THIS FOR A DATE WHEN THE COURT
21 HAS A CALENDAR ON A FRIDAY. BECAUSE OTHERWISE I THINK WE ARE
22 JUST GOING TO BE WAITING TOO LONG.

23 SO, TO TRY TO ACCOMMODATE EVERYBODY'S INTEREST IN THIS
24 MATTER. WE WILL PICK A FRIDAY WHERE WE CAN SET THIS. I WOULD
25 SAY THAT WE PROBABLY SHOULD PICK --

1 NOW, YOU COME UP FROM L.A.

2 MR. GHAZARIAN: YES, YOUR HONOR.

3 THE COURT: DO YOU COME UP FROM L.A, TOO?

4 MR. JOHNSTON: SO DO I, YOUR HONOR, AND AS DO THE
5 THREE DEFENDANTS; AND THEY HAVE TO DRIVE.

6 THE COURT: ALL RIGHT. WELL, WHY DON'T WE PICK IT ON A
7 FRIDAY AT 10:30, FOR EXAMPLE, OR SOMETHING LIKE THAT. WOULD YOU
8 RATHER HAVE NINE O'CLOCK?

9 MR. GHAZARIAN: WELL, THAT MEANS WE HAVE TO THE FLY
10 THE NIGHT BEFORE.

11 THE COURT: EVEN AT 10:30? YOU CAN'T GET ON A SEVEN
12 O'CLOCK FLIGHT?

13 MR. GHAZARIAN: I DON'T KNOW IF THERE IS, I WILL HAVE
14 TO CHECK.

15 THE COURT: WELL, YOU KNOW, THERE ARE A MILLION
16 AIRLINES. AND GEE, EVERY THIRTY SECONDS THEY ARE FLYING FROM
17 L.A.

18 MR. JOHNSTON IF IT IS ALL THE SAME TO THE COURT, EARLY
19 AFTERNOON IS BEST FOR US.

20 THE COURT: BUT EARLY MORNING IS BEST.

21 MR. JOHNSTON: BUT, WE WILL DO WHAT THE COURT
22 CONSIDERS BEST.

23 THE COURT: THAT IS WHY I AM GOING TO PICK TEN-THIRTY,
24 IF THAT IS BETTER THAN NINE O'CLOCK.

25 MR. JOHNSTON: THAT'S FINE. THEN OBVIOUSLY WE WILL DO

1 WHAT THE COURT WANTS.

2 THE COURT: THANK YOU. ALL RIGHT. SO, I AM GOING TO
3 PICK TEN-THIRTY, IF THAT IS BETTER THAN NINE O'CLOCK.

4 MR. JOHNSTON: THANK YOU.

5 THE COURT: OKAY. THAT WAY, HOPEFULLY, YOU CAN GET A
6 MORNING FLIGHT AND GET UP HERE. AND IF YOU WERE A LITTLE
7 DELAYED WE WOULD LIKELY HAVE ON THAT DATE, OTHER MATTERS THAT WE
8 CAN TAKE BEFORE YOUR UNTIL YOU SHOW UP. BUT, TRY NOT TO BE
9 LATE.

10 MR. JOHNSTON: WELL, WE'LL BE HERE, YOUR HONOR.

11 THE COURT: OKAY. ALL RIGHT. SO, MISS LUCERO, WHAT
12 DATE DO WE HAVE OPEN THAT IS GOOD, THAT WOULD GIVE MR. ROSENBUSH
13 A DECENT SHOT AT KNOWING WHEN HIS CASE IS GOING TO BE WRAPPING
14 UP.

15 WE COULD PICK SOMETIME IN DECEMBER, FOR EXAMPLE, I
16 THINK MIGHT BE A GOOD TIME.

17 MR. JOHNSTON: OH, COULD I SUGGEST, YOUR HONOR,
18 BECAUSE --

19 THE COURT: MY SUGGESTION IS PRETTY GOOD BECAUSE WE
20 TOOK THIS CASE AHEAD OF THE CUSTODY'S.

21 MR. JOHNSTON: SORRY, YOUR HONOR. IF HIS TRIAL IS SET
22 TO END IN LATE JANUARY, WE MIGHT BE BETTER OFF PICKING A DATE IN
23 EARLIER JANUARY-ISH, SO HE HAS GOT A REALISTIC NOTION OF WHAT IS
24 HAPPENING WITH THAT TRIAL.

25 THE COURT: HOW ABOUT DECEMBER -- HANG ON. HOW ABOUT

1 DECEMBER 12TH?

2 MISS AULT: THAT IS FINE WITH US, YOUR HONOR.

3 THE COURT: IF WE DID EARLY JANUARY, THE PROBLEM WITH
4 JANUARY IS THAT I AM GOING TO BE PICKING, AT THAT POINT, WE ARE
5 ACTUALLY DOING WHAT CALL A 'HOKEY' VOIR DIRE IN A CAPITAL CASE.
6 AND WE ARE GOING TO PROBABLY HAVE TO USE A SUBSTANTIAL -- WELL,
7 ACTUALLY, NO.

8 WE MIGHT BE ABLE TO DO THAT. IF EARLY JANUARY IS NOT
9 TOO FAR OUT OF LINE FOR MISS AULT, WE CAN GO AHEAD AND PUT EARLY
10 JANUARY.

11 I THINK, YOU WERE ASKING THAT THE MATTER GO OVER,
12 ORIGINALLY UNTIL JANUARY?

13 MISS AULT: YOUR HONOR, I THOUGHT WE WERE GOING TO PUT
14 THE MATTER OVER TO DECEMBER. I DO APOLIGIZE FOR THIS TAKING
15 LONGER. WE WOULD PREFER DECEMBER 12.

16 THE COURT: WELL, I'M JUST WONDERING IF THAT DATE IS
17 TOTALLY CROWEDED ON THE CALENDAR THAT YOU ARE GOING TO SHOW UP
18 ON, I WILL CONSIDER PUTTING IN EARLIER JANUARY; ALTHOUGH I
19 REALLY DON'T WANT YOU HERE WHEN WE ARE DOING WHATEVER WE ARE
20 DONG ON THE CAPITAL CASE.

21 THE CLERK: THE 12TH, IS FINE, DECEMBER.

22 THE COURT: ALL RIGHT, WE WILL GO WITH DECEMBER 12TH.
23 THEN IF MR. ROSENBUSH COMES IN AND SAYS: GEE, I CAN'T TELL YOU
24 ANYTHING, WE WILL TAKE THAT INTO CONSIDERATION.

25 ALL RIGHT, TEN-THIRTY (10:30). I'M EXCLUDING TIME FOR

1 CONTINUITY OF COUNSEL, AT A MINIMUM, FOR PURPOSES OF MR. -- I AM
2 NOT SURE I AM GOING TO BE ABLE TO PRONOUNCE HIS NAME CORRECTLY,
3 BUT MR. ROSENBUSH'S CLIENT.

4 MR. GHAZARIAN: YES; IT IS MR. TER MKRTICHAYAN, YOUR
5 HONOR.

6 THE COURT: "TER-MAH-KER-CHEE-EN"?

7 MR. GHAZARIAN: YES.

8 THE COURT: ALL RIGHT. MR. TER MKRTICHAYAN, HIS
9 INTEREST IN HAVING HIS OWN COUNSEL APEARING IN THIS MATTER,
10 OUTWEIGHT ANYBODY ELSE'S INTERESTS, OR HIS, IN HAVING THE MATTER
11 PROCEED WHILE HIS COUNSEL IS UNAVAILABLE.

12 SO, FOR CONTINUITY, TIME IS EXCLUDED THROUGH DECEMBER
13 12TH.

14 A QUESTION I HAVE IS WHETHER THE DEFENDANTS SHOULD BE
15 PERSONALLY PRESENT FOR THAT PROCEEDING, OR HAVE TO BE, SINCE,
16 FRANKLY, WE ARE GOING TO SET DATE AND IT ISN'T GOING TO BE A
17 TRIAL DATE ON THAT DATE; AND, IT MIGHT SAVE THEM THE TRIP UP
18 FROM L.A. AT LEAST, IF THEY ARE DRIVING UP.

19 MR. JOHNSTON: WE ARE CERTAINLY WILLING TO WAIVE THEIR
20 PRESENCE, IF THE COURT WOULD ALLOW THAT

21 THE COURT: ANY OBJECTION TO THAT?

22 MISS AULT: NO OBJECTION, YOUR HONOR,

23 I'M ASSUMING THAT MR. GHAZARIAN CAN WAIVE FOR HIS ON
24 CLIENT BUT PERHAPS THE COURT SHOULD TAKE A PERSONAL WAIVER.

25 THE COURT: WELL, I DON'T HAVE TO TAKE IT, I WILL JUST

1 SAY THEY AREN'T REQUIRED TO BE HERE. THEN IF THEY DECIDE NOT TO
2 BE --

3 MR. GHAZARIAN: FOR THE RECORD, YOUR HONOR, I AM
4 AUTHORIZED BY MR. ROSENBUSH TO ACT ON HIS BEHALF--

5 THE COURT: OKAY. ALL RIGHT.

6 MR. GHAZARIAN: -- TO WHATEVER EXTENT NECESSARY.

7 THE COURT: ALL RIGHT.

8 MR. GHAZARIAN: AND I SO ACT ALONG WITH MR. JOHNSTON,
9 AND SK THE CLERK TO SO NOTE.

10 THE COURT: ALL RIGHT.

11 FOR ALL THE DEFENDANTS: GENTLEMEN, IF YOU DON'T WANT
12 TO BE HERE AT THE NEXT CALLING, I WILL NOT REQUIRE REQUIRE YOU
13 TO BE HERE, BECAUSE IT IS A PROCEDURAL APPEARANCE IN WHICH DATES
14 ARE GOING TO BE SET.

15 AND WHATEVER DATES THE COURT SET, IF THE COURT
16 REQUIRES YOU TO BE PRESENT ON THAT NEXT DATE, THEN YOU HAVE TO
17 BE THERE AT THE NEXT DATE.

18 DO YOU UNDERSTAND?

19 MR. JOHNSTON: THANK YOU, YOUR HONOR.

20 THE COURT: WOULD ALL OF YOU JUST LIKE YOUR LAWYERS TO
21 APPEAR FOR YOU AND GIVE UP YOUR RIGHT TO BE PRESENT DURING THOSE
22 PROCEEDINGS?

23 THE DEFENDANT, MR. JADJARIAN: SURE.

24 THE DEFENDANT, MR. TER MKRTICHYAN: SURE.

25 THE DEFENDANT, MR. ZADIKIAN: YES.

1 THE COURT: ALL RIGHT. COUNSEL, ARE YOU IN ACCORD IN
2 THAT RESPECT?

3 MR. JOHNSTON: YES, YOUR HONOR. AND THANK YOU, FOR
4 YOUR CONSIDERATION.

5 THE COURT: SO, THE DEFENDANTS APPEARANCE FOR THE NEXT
6 PROCEEDING IS WAIVED.

7 THE NEXT PROCEEDING IS INDICATED THAT TIME WAS
8 EXCLUDED, AND THE COURT FINDS THOSE INTERESTS OUTWEIGHT ANY
9 OTHERS THAT THE PUBLIC, OR MR. TER MKRTICHYAN MIGHT HAVE IN
10 PROCEEDING WITHOUT THE EXCLUSION.

11 AND THE OTHER DEFENDANTS BEING TIED TO HIM, THEIR
12 INTEREST ARE FOLLOWING IN THAT COURSE.

13 ALL RIGHT. OKAY. THANK YOU. STRUGGLE GETTING PLANE
14 SCHEDULES. ALL RIGHT.

15 MR. JOHNSTON: THANK YOU, VERY MUCH, YOUR HONOR.

16 MR. GHAZARIAN: THANK YOU, YOUR HONOR.

17 MISS AULT: THANK YOU, YOUR HONOR.

18

19 < < - < O O O > - > >

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21 (:WHEREUPON THE PROCEEDINGS ADJOURNED:)

22

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24

25

CERTIFICATE OF THE REPORTER

I, CATHERINE EDWARDS, A CERTIFIED SHORTHAND
REPORTER, 3071, FOR THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
CERTIFY THAT:

THE FOREGOING TRANSCRIPT OF PROCEEDINGS WERE
REPORTED BY ME, AND WERE THEREAFTER TRANSCRIBED
UNDER MY DIRECTION INTO TYPEWRITING.

I ALSO HEREBY CERTIFY THAT THE FOREGOING
TRANSCRIPT IS A TRUE RECORD OF THE PROCEEDINGS
AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION
OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY
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/S/ CATHERINE EDWARDS, CSR

DECEMBER 10, 2008